

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

LOCALS 302 AND 612 OF THE
INTERNATIONAL UNION OF
OPERATING ENGINEERS
CONSTRUCTION INDUSTRY HEALTH
AND SECURITY FUND; LOCALS 302
AND 612 OF THE INTERNATIONAL
UNION OF OPERATING ENGINEERS-
EMPLOYERS CONSTRUCTION
INDUSTRY RETIREMENT FUND;
WESTERN WASHINGTON OPERATING
ENGINEERS-EMPLOYERS TRAINING
TRUST FUND; and LOCAL 302
INTERNATIONAL UNION OF
OPERATING ENGINEERS,

Plaintiffs,

v.

509 EXCAVATING LLC, a Washington
limited liability company,

Defendant.

NO.

COMPLAINT TO COLLECT TRUST
FUNDS AND UNION DUES

COUNT ONE

Plaintiff Operating Engineers-Employers Welfare, Pension, and Training Trust
Funds allege:

COMPLAINT TO COLLECT TRUST FUNDS
AND UNION DUES

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They are unincorporated associations operating as Trust Funds pursuant to Section 302 of the Labor Management Relations Act of 1947, as amended, under the respective names of Locals 302 and 612 of the International Union of Operating Engineers-Construction Industry Health & Security Fund, Locals 302 and 612 of the International Union of Operating Engineers-Employers Construction Industry Retirement Fund, and Western Washington Operating Engineers-Employers Training Fund, to provide medical, retirement, and training benefits to eligible participants. Plaintiffs' offices are located in King County, Washington.

The Court has jurisdiction over the subject matter of this action under Section 502 (e)(1) and (f) of the Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. §1132 (e)(1) and (f) and under Section 301 (a) of the Taft-Hartley Act, 29 U.S.C. §185 (a).

Venue is proper in this district under Section 502 (e)(2) of ERISA, 29 U.S.C. §1132 (e)(2), because Plaintiff Trusts are administered in this district.

Defendant is a Washington limited liability company.

Defendant is bound to a collective bargaining agreement with Local 302 of the International Union of Operating Engineers (hereinafter "Local"), under which

1 Defendant is required to promptly and fully report for and pay monthly contributions
2 to the Plaintiff Trusts at varying, specified rates for each hour of compensation
3 Defendant pays to its employees who are members of the bargaining unit
4 represented by the Local (such bargaining unit members are any of Defendant's part
5 time or full time employees who perform any work task covered by the Defendant's
6 labor contract with the Local, whether or not those employees actually join the
7 Local).

8
9 VI.

10 Defendant accepted Plaintiffs' respective Agreements and Declarations of
11 Trust and thereby agreed to pay to each of Plaintiff Trusts liquidated damages equal
12 to twelve percent (12%) of all delinquent and delinquently paid contributions, or
13 \$25.00 per month, whichever sums are greater, and twelve percent (12%) annual
14 interest accruing upon each monthly contribution delinquency from the first day
15 thereof until fully paid, as well as all attorneys fees and costs, including audit
16 expenses if applicable, which Plaintiffs incur in collection of Defendant's unpaid
17 obligations.
18

19 VII.

20 Defendant submitted remittance reports for the months of June 2019 and July
21 2019 for Account Nos. 37186 and 37187, but failed to pay contributions for those
22 months. The total contributions owed for said months are \$61,716.16. Based on
23 Defendant's unpaid contributions for the months of June 2019 and July 2019 for
24 Account Nos. 37186 and 37187, Defendant is further obligated for liquidated
25

1 damages in the amount of \$7,424.54, as well as interest accruing and attorneys fees
2 and costs.

3 VIII.

4 For Account No. 37185, for the employment period June 2019 forward, and
5 for Account Nos. 37186 and 37187 for the employment period August 2019 forward,
6 Defendant failed to promptly report for and/or pay to Plaintiff Trusts all amounts due
7 them, as hereinabove set forth, for work performed by Defendant's employees, and
8 only Defendant's records contain the detailed information necessary to an exact
9 determination of the extent of Defendant's unpaid obligations.
10

11 COUNT TWO

12 Plaintiff, Local 302 of the International Union of Operating Engineers
13 (hereinafter "Local"), alleges:
14

15 I.

16 It is a labor organization with its principal offices in King County and brings
17 this action pursuant to Section 301 of the Labor Management Relations Act of 1947,
18 as amended.
19

20 II.

21 Defendant is a Washington limited liability company.

22 III.

23 Defendant entered into an agreement with the Local, whereunder Defendant
24 agreed to deduct from the periodic paychecks of its employees who are represented
25

1 by the Local, specified amounts for each hour of compensation Defendant pays to
 2 those employees and to remit the total thus deducted each month to the Plaintiff
 3 Local no later than the fifteenth (15th) of the month immediately following the month
 4 in which such deductions were made.

5 IV.

6 Defendant submitted remittance reports for the months of June 2019 and July
 7 2019 for Account Nos. 37186 and 37187, but failed to pay Local the amounts due for
 8 those months. The total amounts owed for dues for said months are \$3,343.54.
 9

10 V.

11 For Account No. 37185, for the employment period June 2019 forward, and
 12 for Account Nos. 37186 and 37187 for the employment period August 2019 forward,
 13 Defendant failed to promptly report for and/or pay to the Local the total sum deducted
 14 from the periodic paychecks of Defendant's employees who are represented by the
 15 Local.
 16

17 WHEREFORE, Plaintiffs pray the Court as follows:

- 18 1. That the Defendant be compelled to render a monthly accounting to the
 19 Plaintiffs' attorneys and set forth in it the names and respective social security
 20 numbers of each of the Defendant's employees who are members of the
 21 bargaining unit represented by the Local, together with the total monthly hours
 22 for which the Defendant compensated each of them, for Account No. 37185
 23 for the employment period June 2019 to the date of service of this Complaint
 24 to Collect Trust Funds and Union Dues and for Account Nos. 37186 and
 25

37187 for the employment period August 2019 to the date of service of this Complaint to Collect Trust Funds and Union Dues and for whatever amounts may thereafter accrue.

2. That plaintiff Trust Funds be granted judgment against Defendant under

COUNT ONE for:

- a. All delinquent contributions due;
- b. All liquidated damages and pre-judgment interest due;
- c. All attorneys fees and costs incurred by Plaintiffs in connection with Defendant's unpaid obligations; and
- d. Such other and further relief as the court may deem just and equitable.

3. That Plaintiff Trusts be granted judgment against Defendant under **COUNT TWO** for:

- a. All amounts owing to it by the Defendant; and
- b. Such other and further relief as the court may deem just and equitable.

DATED this 24th day of September, 2019.

REID, McCARTHY, BALLEW & LEAHY,
L.L.P.



Russell J. Reid, WSBA #2560
Attorney for Plaintiffs